

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

EDWARD G. CRADER,

Plaintiff,

vs.

WAL-MART STORES, Inc.,

Defendant.

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Case No. 1:10CV176 SNLJ

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff Edward G. Crader's Motion to Vacate (#10), filed December 14, 2010. The defendant has not filed a response, and the time for doing so has passed.

This is plaintiff's second case against defendant Wal-Mart Stores East, LP ("Wal-Mart") in fourteen months. The first suit, No. 1:09CV112, filed in August 2009, was an employment discrimination case that was dismissed in March 2010. This suit filed September 20, 2010, alleges that Wal-Mart, in the course of litigating the first suit, disclosed certain personal information.

Defendant Wal-Mart moved to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) on November 3, 2010 (#7). Plaintiff did not respond to Wal-Mart's motion. This Court granted the defendant's motion and dismissed plaintiff's case with prejudice on November 30, 2010 (#9).

Plaintiff has now filed a motion to vacate the dismissal on the grounds that "there has been no hearing," which the plaintiff says is required by Federal Rule of Civil Procedure 12(i). Federal Rule of Civil Procedure 12(i) states "[i]f a party so moves, any defense listed in Rule 12(b)(1)-(7)

--- whether made in a pleading or by motion --- and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.” Plaintiff never responded to the defendant’s motion to dismiss, much less did he request a hearing. Moreover, the Court gave plaintiff’s complaint careful scrutiny and determined that he had failed to state a claim under the Federal Rules of Civil Procedure, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 560 (2007), and *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009).

Plaintiff also asserts that the undersigned judge is impartial and violated the plaintiff’s civil rights. The Court cannot understand the basis for this accusation.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s Motion to Vacate Vacate (#10), filed December 14, 2010 is **DENIED**.

Dated this 31st day of January, 2011.


UNITED STATES DISTRICT JUDGE